May 2, 1979

James A. Robischon, Esquire
Poore, McKenzie, Roth, Robischon &
   Robinson, P.C.
1341 Harrison Avenue
Butte, Montana   59701

     Re: Anaconda, Columbia Falls Plant, HB-716

Dear Jim:

     I am writing to pass along a few thoughts concerning the effect of HB-716 on fluoride emissions from the Columbia Falls plant. In your letter of April 25 you sent along a copy of the recently enacted legislation and indicated that you suspect that the State Department of Health will want to initiate action under the provisions of the new amendments.

     It appears to me that, appropriately interpreted, the noncompliance penalty provisions enacted in HB-716 are inapplicable to Anaconda's potential noncompliance with Montana F emission standards after July 1, 1979. Consequently, it would appear to me that the Company is in a good position to dissuade the State from initiating any action under the new law.

     As I am sure you know, almost every state is taking action to permit it to collect the noncompliance penalties which are required under Section 120 of the Clean Air Act Amendments of 1977. There is a great incentive for such action because EPA will collect and keep such penalties unless the states have their own equivalent

programs. Although new Section 7(a) (page 14 of the printed bill) is somewhat ambiguous, it can reasonably be read to require the assessment of noncompliance penalties only for violations of federally approved state implementation plan orders, standards, and compliance schedules. Since the fluoride emission limitations applicable to the Columbia Falls plant are not technically part of the Montana SIP, the noncompliance penalty provisions are not technically applicable to the Company's fluoride emissions.

The narrow reading of Section 7 is supported by the provisions of Section 14 (page 21 and 22 of the bill) which only allows noncompliance penalties to be assessed for violations of new state emission standards after the standards have been approved by the EPA as SIP amendments.

Very truly yours,

Robert G. Smith

RGS:ems

cc: Krest Cyr, Esquire
Edgar H. Twine, Esquire
Richard B. Steinmetz, Jr., Esquire
B. M. Kostelnik, Esquire
Fredric A. Yerke, Esquire
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